



DEPARTMENT OF HOMELAND SECURITY

U.S. CUSTOMS AND BORDER PROTECTION

[CBP Dec. 22-02]

Notice of Finding That Certain Palm Oil and Derivative Products Made Wholly or In Part with Palm Oil Produced by the Malaysian Company Sime Darby Plantation Berhad Its Subsidiaries, and Joint Ventures, With the Use of Convict, Forced or Indentured Labor Are Being, or Are Likely To Be, Imported Into the United States in violation of 19 U.S.C. 1307

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice of forced labor finding.

SUMMARY: This document notifies the public that U.S. Customs and Border Protection (CBP), with the approval of the Secretary of Homeland Security, has determined that certain palm oil and derivative products made wholly or in part with palm oil produced by Sime Darby Plantation Berhad, its subsidiaries, and joint ventures with the use of convict, forced or indentured labor, are being, or are likely to be, imported into the United States.

DATES: This Finding applies to any merchandise described in Section II of this Notice that is imported on or after [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. It also applies to merchandise which has already been imported and has not been released from CBP custody before [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Ilissa Kabak Shefferman, Chief, Investigations Branch, Forced Labor Division, Trade Remedy Law Enforcement Directorate, Office of Trade, (202) 506-5663 or forcedlabor@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to section 307 of the Tariff Act of 1930, as amended (19 U.S.C. 1307), “[a]ll goods, wares, articles, and merchandise mined, produced or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited.” Under this section, “forced labor” includes “all work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily” and includes forced or indentured child labor.

The U.S. Customs and Border Protection (CBP) regulations promulgated under the authority of 19 U.S.C. 1307 are found at sections 12.42 through 12.45 of title 19, Code of Federal Regulations (CFR) (19 CFR 12.42-12.45). Among other things, these regulations allow any person outside of CBP to communicate his or her belief that a certain “class of merchandise . . . is being, or is likely to be, imported into the United States [in violation of 19 U.S.C. 1307].” 19 CFR 12.42(a), (b). Upon receiving such information, the Commissioner of CBP will initiate an investigation if warranted by the circumstances. 19 CFR 12.42(d). CBP also has the authority to self-initiate an investigation. 19 CFR 12.42(a). If the Commissioner finds that the information available “reasonably but not conclusively” indicates that such merchandise “is being, or is likely to be, imported” into the United States, the Commissioner will order port directors to “withhold release of the merchandise pending [further] instructions.” 19 CFR 12.42(e). After issuance of such a withhold release order, the covered merchandise will be detained by CBP for an admissibility determination and will be excluded unless the importer demonstrates that the merchandise was not made using forced labor in violation of 19 U.S.C. 1307. 19 CFR 12.43-12.44. Subject to certain conditions, the importer may also export the merchandise prior to seizure. 19 CFR 12.44(a).

These regulations also set forth the procedure for the Commissioner of CBP to issue a Finding when the Commissioner determines that the merchandise is subject to the provisions of 19 U.S.C. 1307. Pursuant to 19 CFR 12.42(f), if the Commissioner finds that merchandise within the purview of 19 U.S.C. 1307 is being, or is likely to be, imported into the United States, the Commissioner will, with the approval of the Secretary of the Department of Homeland Security (DHS), publish a Finding to that effect in the *Federal Register* and in the *Customs Bulletin and Decisions*.¹ Under the authority of 19 CFR 12.44(b), CBP may seize and forfeit imported merchandise covered by a Finding.

On December 16, 2020, CBP issued a withhold release order (made effective on December 30, 2020) on “palm oil,” including all crude palm oil and palm kernel oil and derivative products, made wholly or in part with palm oil traceable to Sime Darby Plantation Berhad (“Sime Darby Plantation”), with reasonable evidence demonstrating that the Sime Darby Plantation, including its subsidiaries and joint ventures, primarily located in Malaysia, harvested the fruit and produced the palm oil using forced labor. Through its investigation, CBP has determined that there is sufficient information to support a Finding that Sime Darby Plantation and its subsidiaries are using forced labor on Sime Darby’s plantations in Malaysia to harvest fresh fruit bunches, which are used to extract palm oil and produce derivative products, and that such palm oil and derivative products produced by the company are likely being imported into the United States.

II. Finding

A. General

¹ Although the regulation states that the Secretary of the Treasury must approve the issuance of a Finding, the Secretary of the Treasury delegated this authority to the Secretary of Homeland Security in Treasury Order No. 100-16 (68 FR 28322). See Appendix to 19 CFR Part 0. Under Delegation Order 7010.3, Section II.A.3, the Secretary of Homeland Security delegated the authority to issue a Finding to the Commissioner of CBP, with the approval of the Secretary of Homeland Security. The Commissioner of CBP, in turn, delegated the authority to make a Finding regarding prohibited goods under 19 U.S.C. 1307 to the Executive Assistant Commissioner, Office of Trade.

Pursuant to 19 U.S.C. 1307 and 19 CFR 12.42(f), it is hereby determined that certain articles described in paragraph II.B., that are manufactured or produced in whole or in part with the use of convict, forced, or indentured labor by Sime Darby Plantation and its subsidiaries are being, or are likely to be, imported into the United States. Based upon this determination, the port director may seize the covered merchandise for violation of 19 U.S.C. 1307 and commence forfeiture proceedings pursuant to 19 CFR part 162, subpart E, unless the importer establishes by satisfactory evidence that the merchandise was not produced in any part with the use of prohibited labor specified in this Finding. 19 CFR 12.42(g).

B. Articles and Entities Covered by This Finding

This Finding covers palm oil and derivative products made wholly or in part with palm oil classified under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 12.07.10.0000, 1511.10.0000, 1511.90.0000, 1513.21.0000, 1513.29.0000, 1517, 3401.11, 3401.20.0000, 3401.19.0000, 3823.12.0000, 3823.19.2000, 3823.70.6000, 3823.70.4000, 3824.99.41 and any other relevant subheadings under Chapters 12, 15, 23, 29 and 38, which are produced or manufactured wholly or in part by Sime Darby Plantation, its subsidiaries and joint ventures.

The Secretary of Homeland Security has reviewed and approved this Finding.

Dated: January 25, 2022.

John P. Leonard,
Acting Executive Assistant Commissioner,
Office of Trade.